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Supreme Court of the United States

OCTOBER TERM, 1944

No. 588

ALABAMA STATE FEDERATION OF LABOR, LOCAL UNION NO. 103 UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA, AMERICAN FEDERATION OF LABOR, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA and B. E. JONES,

Petitioners,

vs.

ROBERT E. McADORY, as Solicitor of Jefferson County, Alabama, and HOLT McDOWELL, as Sheriff of Jefferson County, Alabama.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ALABAMA

BRIEF OF AMERICAN CIVIL LIBERTIES UNION AS *AMICUS CURIAE*

AMERICAN CIVIL LIBERTIES UNION,
Amicus Curiae,
ARTHUR GARFIELD HAYS,
Counsel.

DAVID I. ASHE,
OSMOND K. FRAENKEL,
Of Counsel.

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BRIEF OF AMERICAN CIVIL LIBERTIES UNION AS *AMICUS CURIAE*

Statement

The American Civil Liberties Union is a national organization devoted to the protection of civil liberties in general and of the Federal and the several State Bills of Rights in particular. It has members who reside in and are citizens of the various States, including the State

of Alabama. The organization endeavors to defend civil liberties from the viewpoint of the general public. As such, it does not express the views of any particular group or class, political, economic, social or religious. It has come to the aid of employers as well as of labor when it was of the opinion that the civil liberties of either were being threatened. The American Civil Liberties Union was founded upon the principle that where the civil liberties of one group or even of one person are threatened, the freedom of all is endangered. We agree with the following view expressed by this Court in the recent case of *Thomas* v. *Collins* (decided January 8, 1945; Docket No. 14), in striking down as unconstitutional a labor organizer licensing provision in a statute similar to the one here involved:

> "There is some modicum of freedom of thought, speech and assembly which all citizens of the Republic may exercise throughout its length and breadth, which no State, nor all together, nor the Nation itself, can prohibit, restrain or impede. If the restraint were smaller than it is, it is from petty tyrannies that large ones take root and grow. This fact can be no more plain than when they are imposed on the most basic rights of all. Seedlings planted in that soil grow great and, growing, break down the foundations of liberty."

It is with this larger view that we are concerned. We therefore file this brief as *amicus curiae* because we believe that Sections 7 and 16 of the Bradford Act (Act of 1943, p. 253), which are here under review, violate the constitutional guaranties of freedom of speech, press, assembly, and petition, and those against deprivation of liberty without due process of law.

I

Section 7 violates the Fourteenth Amendment to the United States Constitution by imposing a previous general restraint on the civil rights of speech and assemblage.

Section 7 of the Bradford Act makes it unlawful—subject to civil and criminal penalties under Section 18—for any labor organization to *function* in the State of Alabama unless such labor organization

> (1) files with the State Department of Labor a copy of its constitution and by-laws and the constitution and by-laws of its parent organization, if any, and all amendments thereto;
>
> (2) files annually with each member of the organization and with the Director of the Department of Labor a verified written report giving the names and addresses of its officers, and the salaries and other remuneration paid to each; the date of regular election of officers; the number of paid-up members; and a complete financial statement of assets and monies received and detailed list of disbursements;
>
> (3) pays an annual filing fee of two dollars.

These provisions are violative of fundamental civil rights guaranteed by the Fourteenth Amendment against infringement by the States.

By prohibiting a labor union from *functioning* within Alabama unless it files its constitution and an annual report and financial statement, the State is in effect re-

quiring the union to obtain a license as a condition of carrying on its normal and legitimate activities. *International Text Book Company* v. *Pigg*, 217 U. S. 91, 108.

The case cited involved a Kansas statute requiring a foreign corporation doing business within that State to file a statement similar to the one here in question, although much less detailed in nature. This Honorable Court held that such requirement amounted to a licensing of the business. The Alabama Supreme Court in the case at bar missed entirely the significance of the decision in the *International Text Book* case. That Court brushed the decision aside, saying that it "rested solely upon the right of a state to regulate interstate commerce." While the Kansas statute was declared unconstitutional because it violated the "commerce clause", the holding of this Court that the requirement for the filing of such a statement constitutes a licensing is directly applicable to the case at bar.

Similarly, the provision for the payment of an annual fee with the filing of the statement constitutes a license fee upon the right of labor organizations to function within the State of Alabama. *Murdock* v. *Pennsylvania*, 319 U. S. 105.

Civil rights protected by the First Amendment from infringement by Congress and by the Fourteenth Amendment from infringement by the States may not be made subject to a prior license or grant of permission from anyone. *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *New Jersey*, 308 U. S. 147; *Murdock* v. *Pennsylvania*, 319 U. S. 105, *supra*. It is entirely immaterial from the point of view of constitutionality that the fee is only nominal or that the license may be had for the asking. *Grosjean* v. *American Press Company*, 297 U. S. 233; *Thornhill* v. *Alabama*, 310 U. S. 88; *Lovell* v. *Griffin*, *supra*.

Under the foregoing established principles of constitutional law Section 7 of the Bradford Act cannot be sus-

tained. For the activities of a labor union which constitute the "functioning" of such an organization are all within the area of rights protected by the Fourteenth Amendment against infringement by any State.[1]

The very essence of a labor organization is the assemblage of working men and women into one association for their mutual protection. The right of employees thus to form themselves into labor unions has been recognized by this Court as "a fundamental right." *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 33. See also *American Steel Foundries* v. *Tri-City Central Trades Council*, 257 U. S. 184, 209; *Texas & N. O. Railway Co.* v. *Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548.

The constant holding of meetings is an essential part of the "functioning" of a labor union. During an organizational drive, when a union is seeking to unionize non-union employees it calls meetings of such employees in order to explain to them the advantages of union membership. After these employees have joined the union, they meet to discuss their common problems, to exchange information and views concerning such problems, to agree upon common action to solve their problems, and to achieve improvements in their wages, hours and other conditions of employment. There is a constitutional right to hold such meetings which may not be abridged or denied. *Hague* v. *Committee for Industrial Organization*, 307 U. S. 496; *Herndon* v. *Lowry*, 301 U. S. 242; *DeJonge* v. *Oregon*, 299 U. S. 353; *Murdock* v. *Pennsylvania*, 319 U. S. 105; concurring opinion of Mr. Justice Brandeis in *Whitney* v. *California*, 274 U. S. 357, 372; *State* v. *Butterworth*, 104 N.J.L. 579, 142 Atl. 57, 58 A.L.R. 744.

1. "It should be recognized at the outset that a union may use the various forms of concerted action, such as strike, picketing, or boycott, to enforce an objective that is reasonably related to any legitimate interest of organized labor." (Cases cited.) *Joseph James* v. *Marinship Corp. et al.*, decided Dec. 30, 1944, California Supreme Court, No. 17,015.

The process of collective bargaining and the making of collective agreements with employers are also important functions of labor unions and are also fundamental rights. *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, 33; *Texas & N. O. Railway Co.* v. *Brotherhood of Railway and Steamship Clerks*, 281 U. S. 548; *Virginian Railway Co.* v. *System Federation, No. 40*, 300 U. S. 515.

When the collective bargaining process breaks down or an impasse is reached, the union may have to resort to a strike and to picketing. These have likewise been recognized as constitutional rights by this Honorable Court. *Thornhill* v. *Alabama*, 310 U. S. 88; *American Federation of Labor* v. *Swing*, 312 U. S. 321; *Senn* v. *Tile Layers Union*, 301 U. S. 468, 478.

A functioning labor organization also constantly employs the printed word to spread its views. It publishes periodicals and leaflets for distribution to its own members, to non-union employees whom it is seeking to organize, and to the public generally. The State may not abridge the freedom of the press. *Lovell* v. *Griffin*, 303 U. S. 444; *Schneider* v. *New Jersey*, 308 U. S. 147.

By imposing a previous general restraint upon the "functioning" of labor organizations, the Bradford Act is, therefore, denying to the members of these organizations their civil rights, in violation of the Fourteenth Amendment. The statute cannot be sustained on the theory that no constitutional right is absolute but is always subject to regulation to prevent abuse. There is no showing anywhere in the record that the Alabama Legislature conducted any investigation which disclosed any abuses or anticipated abuses. The statute itself contains no findings justifying its provisions. And the record shows affirmatively that no abuses existed among labor organizations in

Alabama and that unions operating in the State have regularly rendered financial accounting to their members. Moreover, even if there were abuses, Section 7 would do nothing to correct them. For once a union complies with the licensing and fee provisions of the statute it may operate in the State whether or not it is guilty of any abuses.

Directly in point are two very recent decisions, one by this Honorable Court and the other by the Supreme Court of Colorado. *Thomas* v. *Collins*, decided by this Court on January 8, 1945, Docket No. 14; *American Federation of Labor* v. *Reilly*, —— P. 2d —— (Colo. Sup. Ct. Dec. 1944).

The *Thomas* case, *supra*, concerned a provision of a Texas statute requiring all labor union organizers operating in that State to register with the Secretary of State and obtain an organizer's card "before soliciting any members for his organization." The Texas statute was much less severe in its requirements and effect than the Alabama statute here involved. In the first place, failure to register under the Texas statute merely debarred a labor organizer from soliciting members. Here failure to file the stated documents and annual reports debars a labor union from carrying on any and all of its functions. Secondly, no fee was charged for registering under the Texas statute, whereas the Alabama statute requires the payment of a two dollars filing fee. Nor was it necessary under the Texas law to file any such comprehensive statements as are required here. Nevertheless, this Honorable Court held the Texas statute to be in contravention of the Fourteenth Amendment, because it imposed a previous restraint upon the rights of free speech and free assembly. In so doing, this Court said:

> "The right thus to discuss, and inform people concerning, the advantages and disadvantages of

unions and joining them is protected, not only as part of free speech, but as part of free assembly."

Discussing the subject further, this Court said in the same opinion:

"As a matter of principle a requirement of registration in order to make a public speech would seem generally incompatible with an exercise of the rights of free speech and free assembly. Lawful public assemblies, involving no element of grave and immediate danger to an interest the state is entitled to protect, are not instruments of harm which require previous identification of the speakers. And the right either of workmen or of unions under these conditions to assemble and discuss their own affairs is as fully protected by the Constitution as the right of businessmen, farmers, educators, political party members or others to assemble and discuss their affairs and to enlist the support of others."

And the Court added:

"If the exercise of the rights of free speech and free assembly cannot be made a crime, we do not think this can be accomplished by the device of requiring previous registration as a condition for exercising them and making such a condition the foundation for restraining in advance their exercise and for imposing a penalty for violating such a restraining order. So long as no more is involved than exercise of the rights of free speech and free assembly, it is immune to such a restriction. If one who solicits support for the cause of labor may be required to register as a condition to the exercise of his right to make a public speech, so may he who seeks to rally support for any social business, religious or political cause. We think a requirement that one must register before he undertakes to make a public speech to enlist support for a lawful move-

ment is quite incompatible with the requirements of the First Amendment."

The Colorado statute involved in *American Federation of Labor* v. *Reilly, supra,* required all labor unions operating in that State to incorporate, and declared violations to be misdemeanors punishable by fine. The Colorado Supreme Court quoted with approval from the opinion of the trial court in that case, which held those provisions to be

> "* * * unconstitutional and inoperative and unenforceable for the reason that the same do require the prerequisite of incorporation for labor unions which, under its wording and provisions, does operate as a complete general previous restraint upon the exercise of the rights of free speech, free press and assembly, thus violating, in the opinion of the Court, the Due Process Clause of the Fourteenth Amendment of the Federal Constitution considered in conjunction with the First Amendment * * *."

In a well reasoned opinion citing numerous decisions by this Honorable Court and by various State Courts, the Colorado Supreme Court held that "the conclusions of the trial court were sound and that its judgment as to the points in consideration must be affirmed."

In practical operation and effect the restraint imposed by the filing requirements of the Alabama statute under consideration in the case at bar is of the same general character as the restraint imposed by the requirement for incorporation under Colorado statute.

It is clear from all the authorities cited and discussed above that Section 7 of the Bradford Act contravenes the Fourteenth Amendment, as it incorporates the First Amendment.

II

Section 16 violates the right of employees to assemble by making it unlawful for certain employees to be union members.

Under Section 16 of the Bradford Act it is "unlawful for any executive, administrative, professional, or supervisory employee to be a member in, or to be accepted for membership by, any labor organization, the constitution and by-laws of which permit membership to employees other than those in executive, administrative, professional or supervisory capacities, or which is affiliated with any labor organization which permits membership to employees other than those in an executive, administrative, professional, or supervisory capacity."

We are not concerned here with the wisdom of supervisory employees in joining a labor organization, but only with their rights. This provision directly abridges the right of executive, administrative, professional, or supervisory employees to self-organization. The "fundamental right" of employees to join into labor unions, recognized by this Court in *National Labor Relations Board* v. *Jones & Laughlin Steel Corporation*, 301 U. S. 1, is just as applicable to administrative or supervisory employees as to any other employees. It is for the employees, and not for the State Legislature, to determine what labor organization will best serve their interests. A State may no more exclude employees from joining a labor union of their own choice because of their supervisory status than it may exclude persons from participating in a primary election because of their color. *Nixon* v. *Herndon*, 273 U. S. 536; *Nixon* v. *Condon*, 286

U. S. 73. Both constitute, in the words of Mr. Justice Holmes in *Nixon* v. *Herndon, supra,* a "direct and obvious infringement of the Fourteenth (Amendment)."

It should be noted, moreover, that the prohibition in Section 16 is a very broad one. Not only is it unlawful for a professional or supervisory employee to be a member of a union which includes non-supervisory employees; he may not even join with other professional and supervisory employees in a union of their own if it affiliates with a labor organization which includes non-supervisory employees. In other words, supervisory employees are forbidden to form their own organization, even though it admits no non-supervisory employees to membership, if it affiliates with the American Federation of Labor or the Congress of Industrial Organization.

Section 16 also violates the rights of union members who may wish to admit professional or supervisory employees to membership in their organization. It is well settled that a voluntary association has complete and sole control over who shall be admitted and who shall be excluded from membership.[1] *Mayer* v. *Journeymen Stonecutters Ass'n,* 47 N. J. Eq. 519; *McKane* v. *Adams,* 123 N. Y. 609; *Richardson* v. *Union Congregational Society,* 58 N.H. 187; *Simons* v. *Berry,* 210 App. Div. (N. Y.) 90, 205 N. Y. S. 442. See also *Steele* v. *Louisville & Nashville Railroad Company, et al.,* decided by this Court on December 18, 1944, Docket No. 45; and the dissenting opinion of Mr. Justice Jackson in *Wallace Corporation* v. *National Labor Relations Board,* December 18, 1944, Docket Nos. 66 and 67.

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1. We are in accord with this view so long as the union is not operating under a closed shop agreement. We approve, therefore, the holding in *Joseph James* v. *Marinship Corp., et al.,* decided Dec. 30, 1944, California Supreme Court, No. 17,015, that a "union may not maintain *both* a closed shop and an arbitrarily closed or partially closed union."

The decisions of the National Labor Relations Board excluding supervisory employees from bargaining units with non-supervisory employees, referred to in the opinion of the State Supreme Court below, have no application here. All that those cases hold is that the purposes of the National Labor Relations Act would not be effectuated by "the representation of supervisory employees by the *same* organizations which might represent the subordinates." (*Matter of Maryland Drydock Co.*, 49 NLRB, No. 105; emphasis supplied.) The Board, in the exercise of its discretion under the Act, has merely decided what constitutes an appropriate collective bargaining unit. It has not attempted to prohibit supervisory employees from joining labor organizations. And there certainly is a vast distinction, from the point of view of constitutionality, between holding that supervisory employees do not constitute an appropriate bargaining unit and making membership by supervisory employees in a union a criminal offense, punishable by fine or imprisonment or both under Section 18 of the Bradford Act.

III

Section 16 violates the "due process" clause of the Fourteenth Amendment because of its vagueness.

Nowhere in the Bradford Act are the terms "executive", "administrative", "professional", or "supervisory", as used in Section 16, defined. It is impossible, therefore, for employees or unions to know just which employees come within these categories. For example, most industrial concerns employ "working foremen", who perform certain supervisory functions but who also do work of the same character as their subordinate em-

ployees. Such foremen are generally included in bargaining units by the National Labor Relations Board. See *Floyd D. Penrod & Sons Tool & Engineering Co.*, 59 NLRB, No. 29; *Jones & Laughlin Ore Co.*, 59 NLRB, No. 38; *Land O'Lakes Creameries, Inc.*, 53 NLRB, No. 170; *H. L. Ruggles & Co.*, 38 NLRB, No. 62. In other cases, however, the same Board has held that such employees are supervisors who are to be excluded for bargaining units. See *Fairfield Lumber & Supply Co.*, 57 NLRB, No. 255; *Zierick Mfg. Co.*, 57 NLRB, No. 261. The same difficulities in determining supervisory status have arisen under Section 13 (a)(1) of the Fair Labor Standards Act, exempting "executive, administrative (and) professional" employees. See Report and Recommendations of Presiding Officer in matter of Proposed Amendments to Wage and Hour Division Regulation 541 (CCH Labor Law Service, Par. 31, 302).

With so much existing confusion as to who are and who are not supervisory employees, and with no definitions or standards set up in the statute here in question, an employee would join a union at his peril and the officers of the union would accept an employee into membership at their peril. For they might be subjected to criminal liability if a Court should subsequently decide that the employee was an executive, administrative, professional or supervisory employee.

A criminal statute which is so vague and uncertain as to its application does not fulfill the requirements of due process under the Fifth and Fourteenth Amendments. *Lanzetta v. New Jersey*, 306 U. S. 451; *United States v. Reese*, 92 U. S. 214; *United States v. Cohen Grocery Co.*, 255 U. S. 81, 89.

CONCLUSION

It is respectfully submitted that Sections 7 and 16 of the Bradford Act are unconstitutional for the reasons set forth above.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION,
ARTHUR GARFIELD HAYS,
Counsel.

DAVID I. ASHE,
OSMOND K. FRAENKEL,
Of Counsel.